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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,809	11/03/2003	Mitsuru Arai	03665/LH	4459
1933 7590 07/27/2007 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708			EXAMINER WEINSTEIN, LEONARD J	
			ART UNIT 3746	PAPER NUMBER
			MAIL DATE 07/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/699,809

Applicant(s)

ARAI ET AL.

Examiner

Leonard J. Weinstein

Art Unit

3746

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

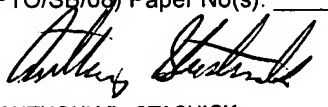
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
ANTHONY D. STASHICK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



Continuation of 11. does NOT place the application in condition for allowance because: 1. Applicant's arguments filed July 9, 2007 have been fully considered but they are not persuasive.

With regards to the Rometesch reference and claims 5, and 7-9 the applicant argues that control valve 40 controls outflow of fluid from a control chamber but does not control inflow of fluid into the control chamber therefore is not a control valve which is built-in the servo piston, and which controls inflow and outflow of oil in the oil chamber, and which is positioned by applying a (volume) control pressure thereto. With regards to the Kuroyanagai reference and claim 5 the applicant argues that since the spring 64 is held between the second piston 60 and the cap 63 according to Kuroyanagai et al, the spring 64 and the second control chamber 65 of Kuroyanagai et al are not within the servo piston 60. The applicant also argues that the spring 64 and control chamber 65 do not constitute a "valve" or by definition: "any device for halting or controlling the flow of a liquid, gas, or other material through a passage, pipe, inlet, outlet, etc." As cited from Dictionary.com in the response by applicant of July 7, 2007. Further the applicant argues the spring 64 and second control chamber 65 of Kuroyanagai et al do not correspond to a control valve which is built-in the servo piston, and which controls inflow and outflow of oil in the oil chamber, and which is positioned by applying a (volume) control pressure, wherein the driving pressure in the oil chamber is changed by changing the position of the control valve by controlling the (volume) control pressure applied to the control valve. The applicant also argues that the Examiner's interpretation of Kuroyanagai et al in item 6 on page 4 of the Office Action conflicts with the Examiner's interpretation of Kuroyanagai et al in item 3 on pages 2 and 3 of the Office Action. Further the applicant has requested that the examiner clarify why the O-ring 30 of Kuroyanagai et al, which prevents leaks through cap 63 (or 53), is referred to throughout the Office Action as forming part of a servo piston together with servo piston 60 of Kuroyanagai et al.

In response to applicant's argument that the control valve of Rometesch controls outflow of fluid from a control chamber but does not control inflow of fluid into the control chamber the examiner disagrees. The control valve allows fluid to pass from the chamber 34 to a pressure relief pocket 22 under a predetermined pressure that causes a control valve to permit fluid flow through tube 42, small bore 45, and large bore 46 (Rometesch - col. 3 ll. 53-65). When the control is forced to open the pathway to the tube 42, it is effectively controlling the inflow and outflow of fluid to the oil chamber. Prior to the valve element actuation no flow into or out of the chamber 34 can occur because the chamber is pressurized and filled with fluid. When the valve element is actuated and the pathway connecting tube 42 is open, fluid flows out of the oil chamber as well as fluid previously stopped within fluid delivery line 29 is introduced into the chamber 34 (Rometesch - col. 24-27). Therefore the control valve of Rometesch is a control valve that is built in a servo piston, and does control inflow and outflow of oil in the oil chamber, and is positioned by applying a (volume) control pressure thereto.

In response to applicant's argument that the spring 64 of the Kuroyanagai reference is held between the second piston 60 and the cap 63, and that the spring 64 and second control chamber 65 are clearly not within the second piston 60 the examiner clarifies the interpretation of the prior art as follows. Kuroyanagai does teach that the spring 64 is held between the second piston 60 and a cap 63, and that the second control chamber 65 is defined by the second piston 60, the second cylinder 68 and the cap 63 however Kuroyanagai also teaches a spring 64 that is affixed to a surface disposed below element 30 as shown in figure 3. Reference to element 30 was made in the prior Office Action for lack of a designation to the surface as discussed within the written description of Kuroyanagai. The surface disposed below element 30 and element 60 are considered to be the structure of the piston. The spring 64 and second control chamber 65 are within the servo piston and can be interpreted to be a control valve. Therefore Kuroyanagai as cited does teach a control valve built-in the servo piston, that controls inflow and outflow of oil in the oil chamber, and is positioned by applying a (volume) control pressure, wherein the driving pressure in the oil chamber is changed by changing the position of the control valve by controlling the (volume) control pressure applied to the control valve.

Further in response to applicant's argument that the spring 64 and control chamber 65 do not constitute a "valve" or by the definition: "any device for halting or controlling the flow of a liquid, gas, or other material through a passage, pipe, inlet, outlet, etc," the examiner disagrees. The spring and control chamber of Kuroyanagai cited permit a flow of fluid from a chamber cited in the office action of April 20, 2007 to be element 66. Element 66 is in communication with a chamber as disclosed by Kuroyanagai as element 70 (Kuroyanagai - col. 4 ll. 25-33). Therefore the elements of Kuroyanagai cited to constitute a device which halts/controls the flow of a liquid/gas through a passage. Further in response to applicant's argument the interpretation of Kuroyanagai et al in item 6 on page 4 of the Office Action conflicts with the interpretation of Kuroyanagai et al in item 3 on pages 2 and 3 of the Office Action, the examiner disagrees. Elements 17 and 66 are in communication with one another via element 70 and therefore a reference to both as an oil chamber is proper and the interpretation of the spring 64 and second control chamber 65 of Kuroyanagai et al as a "control valve" in item 6 of the Office Action does not conflict with the interpretation in item 3 of the Office Action.

In response to applicant's request for clarification with regards to the reference to element 30 as forming part of a servo piston the examiner made reference to element 30 in the prior Office Action for lack of a designation to the surface as discussed within the written description of Kuroyanagai. The surface disposed below element 30 and element 60 are considered to be the structure of the piston. The examiner would like to point out that in the Office of April 20, 2007 an error was made in item 3 whereby the office action should have stated that claims 5 and 6 were rejected under 35 U.S.C. 102(b) as being anticipated by Kuroyanagai et al. 4,652,215..